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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 09 2009

JAMES R LARSEN, CLERK
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YAKIMA, WASHINGTON

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12)
13)
14 EDDIE L. FORD,)
15 Plaintiff,)
16) No. **CV-09-3108-LRS**
17 v.)
18) **COMPLAINT**
19)
20 CITY OF YAKIMA;)
21 LIEUTENANT N. WENTZ; and)
22 OFFICER R. URLACHER;)
23 Defendants.)
24)
25)

26 **I. INTRODUCTION**

27 1. This is an action for money damages brought pursuant to 42
28 U.S.C. §§ 1983 and 1988, the First, Fourth and Fourteenth Amendments to
29 the United States Constitution, and under the common law of the State of
30 Washington, against OFFICER R. URLACHER, and LIEUTENANT N.
31 WENTZ, police officers of the City of Yakima, in their individual capacities
32 and against the CITY OF YAKIMA.

34
COMPLAINT - 1

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Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343, and on the pendent jurisdiction of this Court, under 28 U.S.C. § 1337, to entertain claims arising under state law.

2. It is alleged that the individual police officer defendants made an unlawful traffic stop and unreasonable seizure of the person EDDIE L. FORD and an illegal search of his vehicle, thus violating his rights under the First, Fourth and Fourteenth Amendments of the United States Constitution. It is further alleged that these violations and torts were committed as a result of policies and/or customs and/or ratifying acts of the City of Yakima.

3. Plaintiff filed and presented a verified Notice of Claim for Damages to Defendant City of Yakima on March 12, 2009. Said Notice of Claims for Damage was accepted by Yakima City Clerk Deborah Moore. Plaintiff's filing and presentment of said Notice of Claim for Damages was in full and complete compliance with the requirements of RCW 4.96 et seq. The statutory waiting period has passed for commencement of this action. Plaintiff has fully and completely complied with the statutory requirements of RCW 4.96 et seq.

II. PARTIES

4. Plaintiff EDDIE L. FORD is a citizen and resident of Yakima County, State of Washington, and the United States of America.

5. Defendants OFFICER R. URLACHER and LIEUTENANT N. WENTZ were at all times relevant to this complaint duly appointed and acting police officers employed by the City of Yakima Police Department, acting under color of law, to wit, under color of statutes, ordinances, regulations,

1 policies, customs and usages of the State of Washington and/or City of
2 Yakima.
3

4 6. Defendant City of CITY OF YAKIMA is a municipal
5 corporation, organized under the laws of the State of Washington and the
6 public employer of the defendant officers.
7

8 ***III. FACUTAL AVERMENTS***

9 7. Plaintiff FORD was driving to work at the Noel Corporation on
10 July 17, 2007 at approximately 12:09 a.m. As Mr. FORD drove over the Nob
11 Hill Boulevard overpass toward South 1st Street he saw a police cruiser
12 travelling in the outside lane and rapidly approaching his vehicle. The police
13 cruiser was driven by Defendant URLACHER.
14

15 8. As Mr. FORD neared the intersection of Nob Hill Boulevard and
16 South 1st Street he started to enter the left turn lane. Mr. FORD initially
17 believed the police cruiser would continue and pass by in the outside lane.
18

19 9. Mr. FORD then saw the police cruiser switch lanes and move in
20 closely behind him just as he started to enter the left turn lane at the
21 intersection of Nob Hill Boulevard and South 1st Street. Mr. FORD
22 immediately attempted to move out of the way of the police cruiser in an effort
23 to allow Defendant URLACHER to proceed. Defendant URLACHER
24 changed lanes and followed Mr. FORD as he tried to move out of the way.
25 Mr. FORD came to a stop as the traffic light at the intersection was red.
26 Defendant URLACHER then stopped his police cruiser directly behind Mr.
27 FORD at the intersection.
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1 10. As both vehicles waited at the red light Mr. FORD stepped from
2 his vehicle to ask Defendant URLACHER why he was being followed so
3 closely. Defendant URLACHER responded by yelling at Mr. FORD to "GO"!
4 Mr. FORD responded by getting back into his car and proceeding through the
5 intersection after the light turned green.
6

7 11. Defendant URLACHER followed turning on the police cruiser's
8 flashing lights and initiated a traffic stop of Mr. FORD after he crossed the
9 intersection. Mr. Ford immediately pulled his vehicle safely off the roadway
10 and stopped. After stopping, Mr. Ford stepped from of his vehicle and stood
11 by the driver-side door. As Mr. FORD stood by his vehicle he began
12 criticizing Defendant URLACHER, accusing him of misconduct by essentially
13 claiming the traffic stop was improper, racially motivated, and nothing more
14 than unlawful harassment.
15

16 12. Defendant URLACHER responded to Mr. FORD'S accusations
17 by stepping out of his cruiser, drawing a Taser stun gun, pointing it at Mr.
18 FORD, and telling him to "do exactly as I say or force will be used."
19

20 13. Mr. FORD responded to Defendant URLACHER'S threat of
21 force by returning to his vehicle, sitting down, and demanding to speak with a
22 Sergeant. Defendant URLACHER refused Mr. FORD'S request to speak with
23 a Sergeant and instead continued to point his Taser at Mr. FORD saying, "Do
24 as I say or force will be used." Mr. FORD continued to criticize Defendant
25 URLACHER, telling him that he should be ashamed of himself as he was
26 "straight up" prejudice.
27

1 14. Defendant URLACHER next ordered Mr. FORD to stay in his car
2 and close the door. Mr. FORD remained in his vehicle and complied with
3 Defendant URLACHER'S request as the officer returned to his police cruiser.

4 15. Upon returning to his cruiser, Defendant URLACHER alleged
5 that Mr. FORD had jumped out of his car and confronted him at the
6 intersection. Defendant URLACHER also alleged that Mr. FORD was blaring
7 his music prior to being stopped.

8 16. Defendant URLACHER'S allegations were embellished,
9 misleading and false.

10 17. Defendant URLACHER further stated that he was thinking of
11 arresting Mr. FORD for city noise ordinance violation. However, that he
12 might get only a ticket if he cooperated. Defendant URLACHER also stated,
13 "But with that attitude, he's going to get cuffed."

14 18. Defendant URLACHER then proceeded back to Mr. FORD'S
15 vehicle and again pointed his Taser stun gun at Mr. FORD while telling him to
16 step out of the car and put his hands behind his back. Mr. FORD complied
17 with Defendant URLACHER'S demand by placing his hands behind his back
18 and asking, "For what?" Defendant URLACHER angrily responded, "Do it
19 now or you are going to get Tased." Mr. FORD asked, "What did I do?"
20 Defendant URLACHER again responded, "Do it now or you are going to get
21 Tased!" "Turn around or you're going to get Tased." "Don't be an idiot!"
22 Mr. FORD'S only response was to say that Defendant URLACHER was the
23 only idiot at the scene. Mr. FORD was then promptly handcuffed at
24 Defendant URLACHER'S direction.

1 19. After handcuffing Mr. FORD, Defendant URLACHER stated
 2 that, "if you cooperate, I may let you go with a ticket today." Defendant
 3 URLACHER then threatened Mr. FORD saying, "If you run your mouth, I
 4 will book you in jail for it." "Yes I will, and I will tow your car."

5 20. Defendant URLACHER further stated, "If you cooperate and shut
 6 your mouth, I'll give you a ticket and you can go." Mr. FORD explained to
 7 Defendant URLACHER that he was on his way to work and needed to get
 8 there. Defendant URLACHER abruptly responded by saying, "Well, that's
 9 not going to happen if you keep running your mouth." Defendant
 10 URLACHER further informed Mr. FORD that, "If you have diarrhea of the
 11 mouth, you will go to jail." Afterwards, Mr. FORD was taken in handcuffs to
 12 Defendant URLACHER'S police cruiser and placed in the back seat.

13 21. While Mr. FORD was handcuffed and sitting in the back seat of
 14 the cruiser, Defendant URLACHER stated the following recitation of events:
 15 "Dude, we're stopped at this light, dude, and he jumps out of his car, what the
 16 F are you following me for? And I go, send me another unit, code three. And
 17 so I waited for the light to turn and I lit him up, dude. I wasn't even – I didn't
 18 know if I was even going to stop him yet. I'm like geez, Louise, dude."

19 22. Defendant URLACHER'S recitation of events was embellished,
 20 misleading and false.

21 23. Defendant URLACHER next stated that the police would, "write
 22 him [Mr. FORD] for everything we can." Defendant URLACHER then
 23 proceeded to unlawfully search through Mr. FORD'S vehicle at the scene.

1 Defendant WENTZ arrived at the scene as Defendant URLACHER was
 2 searching Mr. FORD'S vehicle.
 3

4 24. Defendant URLACHER gave the following recitation of events to
 5 Defendant WENTZ:
 6

7 “So I pull out, come up to the light here, stop behind him, just running
 8 his plate, not even knowing if I'm going to, you know, stop him yet. He puts it
 9 in park, jumps out of the car and starts coming up to my patrol car. I'm like,
 10 get back in your car. I didn't even have my lights on. He's like, what the
 11 Fuck are you following me for? And he's flexing. And I go, Dude, get back
 12 in your car.” “And he's just yelling and cussing, and we're racial profiling
 13 because he's driving a Cadillac.” “If he shuts up, I'll let him go with a ticket.”
 14

15 25. Defendant URLACHER'S recitation of events was embellished,
 16 misleading and false.
 17

18 26. Defendant URLACHER went on to inform Defendant WENTZ
 19 that Mr. FORD had, “just talked himself into cuffs, so that's pretty much what
 20 we've got.”
 21

22 27. During his discussion with Defendant URLACHER, Defendant
 23 WENTZ accused Mr. FORD of having a history of being violent and getting
 24 worse over time. Defendant WENTZ also stated that Defendant URLACHER
 25 should take Mr. FORD to jail saying that, “I would not just write him a ticket
 26 and let him go.” “I'd sign him up.” “I'd sign his ass up.” Defendant
 27 URLACHER agreed with Defendant WENTZ saying, “that's what I needed to
 28 know, because you guys have history.” “Okay, he's getting booked, then.”
 29
 30

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1 28. Defendant WENTZ' accusations against Mr. FORD were
 2 embellished, misleading and false.
 3

4 29. During the arrest, Defendant URLACHER referred to Mr. FORD
 5 as a "big boy", and that "he thought it was Mike Tyson." Defendant
 6 URLACHER claimed, "One wrong move, he's getting Tased. He's a big
 7 boy." The traffic stop and arrest of Mr. FORD were in part, racially motivated
 8 and/or retaliatory, illegal, and in clear violation of protections provided by the
 9 United States Constitution.
 10

11 30. While Mr. FORD was handcuffed in the back of his patrol car,
 12 Defendant URLACHER proceeded to inform Mr. FORD that, "You're going
 13 to jail tonight." Mr. FORD responded by asking, "What am I going to jail
 14 for?" Defendant URLACHER responded, asserting that, "If you just cooperate
 15 and treat the police like humans, we'll treat you like that. But when you act
 16 like that, like an animal, you've got to get treated that way. So it's just life
 17 man."
 18

19 31. Defendant URLACHER further stated to Mr. FORD that, "your
 20 mouth and your attitude talked you into jail. Yes it did."
 21

22 32. Mr. FORD was then transported to jail by Defendant
 23 URLACHER. The CITY OF YAKIMA later attempted to prosecute Mr.
 24 FORD for violating the City Noise Ordinance. Defendant URLACHER
 25 appeared as a witness for the CITY OF YAKIMA at trial to offer testimony
 26 against Mr. FORD.
 27

28 33. Mr. FORD was exonerated and found "Not Guilty" at trial.
 29
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 31

1 34. Defendant URLACHER engaged in unlawful retaliatory action
2 and/or arrest against Mr. FORD in violation of the Constitution of the United
3 States of America.

4 35. Defendant WENTZ engaged in unlawful retaliatory action and/or
5 arrest against Mr. FORD in violation of the Constitution of the United States
6 of America.

7 36. At no time during the events described above, was Mr. FORD a
8 threat to the safety of himself, the officers, or others. Mr. FORD had not
9 committed any criminal offense at the time of his stop and/or arrest.

10 37. The defendant police officers had no warrant for the arrest of Mr.
11 FORD, had no probable cause for the arrest, and no legal cause or excuse to
12 seize his person, or search his vehicle. The arrest of Mr. FORD and search of
13 his property were in violation of law.

14 38. At all times during the events described above, the defendant
15 police officers were engaged in unlawful joint venture and/or conspiratorial
16 misconduct. The individual officers assisted each other in performing the
17 various actions described and lent their physical presence and support and the
18 authority of their office to each other during the said events.

19 39. Furthermore, policy and/or custom and/or ratifying action of the
20 City of Yakima permits inadequate supervision and/or training of officers,
21 including defendant officers, thereby failing to adequately discourage and
22 prohibit constitutional violations on the part of Defendant officers.

23 40. The Citizens of Yakima, including Mr. FORD, have an absolute
24 right to be free from unlawful and/or retaliatory arrests from City of Yakima

1 Law Enforcement Officers. The City of Yakima, acting by and through the
2 City of Yakima Police Department and its police officers, is strictly prohibited
3 from engaging in acts of retaliation against the Citizens of Yakima, including
4 Mr. FORD. The City, acting by and through the City Police Department, its
5 policies and/or customs and/or ratification have failed to fulfill this duty with
6 regard to the above-referenced actions thereby approving of unconstitutional
7 action against Mr. FORD.

8 41. The City of Yakima, acting by and through the City of Yakima
9 Police Department and its police officers has a duty to exercise appropriate
10 hiring, supervision, and retention of its law enforcement officers. The Yakima
11 Police Department has failed to fulfill this duty with regard to the above-
12 referenced actions against Mr. FORD.

13 42. Additionally, the City of Yakima, acting by and through the City
14 of Yakima Police Department and its police officers has an absolute duty to
15 exercise reasonable care in the operation of its policing and custodial actions
16 within the City of Yakima. The Yakima Police Department has failed to fulfill
17 this duty with regard to the above-referenced actions against Mr. FORD.

18 43. The City of Yakima, acting by and through the City of Yakima
19 Police Department its policies and/or customs and/or ratifications, and
20 individual Defendants URLACHER and WENTZ, subjected Mr. FORD to the
21 following deprivations, including but not limited to: Loss of Freedom of
22 Speech, Loss of Freedom from Unreasonable Search and Seizure, Loss of
23 Freedom from Excessive Force and Excessive Use of Force, Loss of Freedom
24 from Racially Motivated and/or Retaliatory Stop and Arrest, Loss of Freedom
25

1 from Violations of Due Process and Equal Protection; Loss of Liberty, and
 2 Loss of Freedom from Unlawful Conspiracy, all in violation and against the
 3 Constitution and statutes of the United States of America, and contrary to 42
 4 U.S.C. Section 1983.

5 44. In addition, the above-referenced actions against Mr. FORD
 6 constitute the common law torts of malicious prosecution, abuse of process,
 7 outrage, and negligence.

8 45. Plaintiff suffered the following injuries and damages as a direct
 9 and proximate result of the aforementioned acts and/or omissions of
 10 defendants:

11 a. Violation of constitutional rights under the First, Fourth
 12 and Fourteenth Amendments to the United States Constitution;
 13 b. Loss of liberty;
 14 c. Pain, suffering, humiliation and emotional trauma; and
 15 d. Monetary expense in defending improper criminal
 16 allegation at trial.

17 46. The actions of the defendants URLACHER, WENTZ, and CITY
 18 OF YAKIMA violated the following clearly established and well settled
 19 Federal Constitutional Rights of plaintiff, EDDIE L. FORD:

20 a. Freedom of Speech;
 21 b. Freedom from the unreasonable seizure of his person;
 22 c. Freedom from the use of excessive, unreasonable, and
 23 unjustified force against his person;
 24 d. Freedom from unreasonable search;

- e. Freedom from unlawful conspiracy; and
- f. Freedom from violations of due process, equal protection

and loss of liberty.

IV. LEGAL AVERMENTS

[COUNT I]

42 U.S.C. § 1983 AGAINST INDIVIDUAL DEFENDANTS

47. Paragraphs 1 through 46 are incorporated herein by reference as though fully set forth.

48. Plaintiff EDDIE L. FORD claims damages for the injuries set forth above under 42 U.S.C. § 1983 against defendants OFFICER R. URLACHER and LIEUTENANT N. WENTZ for violations of his constitutional rights under color of law, including but not limited to: Loss of Freedom of Speech, Loss of Freedom from Unreasonable Search and Seizure, Loss of Freedom from Excessive Force and Excessive Use of Force, Loss of Freedom from Racially Motivated and/or Retaliatory Stop and Arrest, Loss of Freedom from Violations of Due Process and Equal Protection; Loss of Liberty, and Loss of Freedom from Unlawful Conspiracy, all in violation and against the Constitution and statutes of the United States of America, and contrary to 42 U.S.C. Section 1983.

[COUNT III]

42 U.S.C. § 1983 AGAINST CITY OF YAKIMA

49. Paragraphs 1 through 48 are incorporated herein by reference as though fully set forth.

50. The CITY OF YAKIMA, acting by and through the policies, customs and ratifying actions of the City of Yakima Police Department and its

1 officers, deprived Mr. FORD of Constitutional Rights, Protections and
 2 Privileges, including but not limited to: Loss of Freedom of Speech, Loss of
 3 Freedom from Unreasonable Search and Seizure, Loss of Freedom from
 4 Excessive Force and Excessive Use of Force, Loss of Freedom from Racially
 5 Motivated and/or Retaliatory Stop and Arrest, Loss of Freedom from
 6 Violations of Due Process and Equal Protection; Loss of Liberty, and Loss of
 7 Freedom from Unlawful Conspiracy, all in violation and against the
 8 Constitution and statutes of the United States of America, and contrary to 42
 9 U.S.C. Section 1983.

13

14 ***[COUNT III]***
 15 ***NEGLIGENCE AGAINST CITY OF YAKIMA***

16 51. Paragraphs 1 through 50 are incorporated herein by reference as
 17 though fully set forth.

18 52. Defendant City of Yakima, acting by and through the City of
 19 Yakima Police Department has a duty to exercise appropriate hiring,
 20 supervision, and retention of its police officers. Defendant CITY OF
 21 YAKIMA has failed to fulfill its duty with regard to the above-referenced
 22 actions of Defendant URLACHER thereby directly and proximately causing
 23 harm to plaintiff.

24 53. Alternatively, Defendant CITY OF YAKIMA, acting by and
 25 through the City of Yakima Police Department and its police officers has an
 26 absolute duty to exercise reasonable care in the operation of its policing and
 27 custodial actions within the City of Yakima. The Yakima Police Department
 28 has failed to fulfill this duty with regard to the actions involving Mr. FORD

1 thereby directly and proximately causing harm to plaintiff for which Defendant
2 CITY OF YAKIMA is vicariously liable.
3

4 ***[COUNT IV]***
5 ***NEGLIGENCE AGAINST INDIVIDUAL DEFENDANTS***

6 54. Paragraphs 1 through 53 are incorporated herein by reference as
7 though fully set forth.
8

9 55. Defendant Officers have a duty to exercise reasonable care while
10 performing all policing actions within the City of Yakima. Defendants
11 URLACHER and WENTZ failed to exercise reasonable care during their
12 contact with Mr. FORD thereby directly and proximately causing harm to
13 plaintiff.
14

15 ***[COUNT V]***
16 ***MALICIOUS PROSECUTION - ALL DEFENDANTS***

17 56. Paragraphs 1 through 55 are incorporated herein by reference as
18 though fully set forth.
19

20 57. That on or about July 17, 2007, criminal proceedings were
21 initiated against the Plaintiff by Defendants.
22

23 58. That there was want of probable cause for the institution or
24 continuation of the prosecution.
25

26 59. That the prosecution was instituted or continued through malice.
27

28 60. That the prosecution was terminated in favor of Plaintiff who was
29 found Not Guilty.
30

31 61. That Plaintiff FORD incurred expense in defending himself
32 against the charges and that he has further suffered humiliation and mental
33
34

1 anguish, all of which are compensable by money damages in an amount to be
2 proven at trial.
3

4 ***[COUNT VI]***
5 ***ABUSE OF PROCESS – DEFENDANT URLACHER***

6 62. Paragraphs 1 through 61 are incorporated herein by reference as
7 though fully set forth.
8

9 63. Defendant URLACHER engaged in the improper use of legal
10 process with an ulterior purpose of accomplishing an end which the process
11 was not designed to accomplish.
12

13 ***DEMAND FOR JURY TRIAL***
14

15 64. Plaintiffs hereby request a Jury Trial.
16

17 WHEREFORE, Plaintiff prays for judgment against each defendant,
18 individually and jointly, in the amounts proven at trial, including but not
19 limited to, all economic and non-economic damages suffered by plaintiff,
20 reasonable attorney fees, punitive damages, costs and expenses, together with,
21 or separately from such other damages, fees and costs to which they may be
22 entitled under the premises, both factual and legal, of suit herein.
23

24 Additionally, for such other and further relief as the court deems just and
25 equitable.
26

27 DATED this 9th day of November, 2009.
28

29 LAW OFFICE OF WILLIAM D. PICKETT
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33 WILLIAM D. PICKETT, WSBA NO. 27867
34 Attorney for Plaintiff